

Seera Simhachalam and Another Vs. Pediredla Simhachalam and Others

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Court : Andhra Pradesh

Decided On : Dec-09-1999

Reported in : 2000(2)ALD292; 2000(2)ALT479

Judge : C.V.N. Sastri, J.

Acts : [Specific Relief Act, 1963](#) - Sections 31 and 38; Specific Relief (Amendment) Act, 1968 - Sections 38 and 38(2); [Indian Contract Act, 1872](#) - Sections 23; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100; [Transfer of Property Act, 1882](#) - Sections 53-A; Andhra Pradesh Land Reforms (Ceiling on Agriculture) Act, 1973

Appeal No. : SA No. 550 of 1990

Appellant : Seera Simhachalam and Another

Respondent : Pediredla Simhachalam and Others

Advocate for Def. : Mr. E.S. Ramachandra Murthy, Adv.

Advocate for Pet/Ap. : Mr. T. Veerabhadrayya, Adv.

Judgement :

ORDER

1. This appeal filed by defendants arises out of a suit for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property consisting of Ac. 1.00 of agricultural

land in S.No. 81/3 of Kudduvalasa Village. During the pendency of the suit the original plaintiff died and the respondents herein were brought on record as his legal representatives. It was the case of the plaintiff that he was the owner of the suit property and that he executed a nominal sale deed dated 6-7-1970 (Ex.B1) in favour of the first defendant who was his close friend, apprehending that the plaintiff might loose some of his lands in view of the impending Land Ceiling Legislation. It was further case of the plaintiff that on the same date the first defendant executed an agreement of re-conveyance (Ex.A5) in his favour admitting the said facts and promising to re-convey the suit property to him whenever demanded. It was also the case of the plaintiff that the sale deed Ex.B1 was without any consideration and it was never intended to be acted upon and that he himself continued to be in possession and enjoyment of the suit land. On account of certain disputes, which arose between them. Subsequently the defendants unlawfully began to interfere with his possession and enjoyment of the suit property. Hence he filed the suit.

2. The defendants resisted the suit contending that Ex.B1 sale deed was an out and out sale deed fully supported by consideration and that possession of the land was delivered to the first defendant on the date of the sale deed and that ever since the defendants themselves have been in possession and enjoyment of the plaint scheduled property. The defendants also denied the truth and validity of the alleged agreement of re-conveyance Ex.A5. Both the parties adduced oral and documentary evidence in support of their respective cases. The trial Court found that Ex.B1 sale deed was only a nominal sale deed and it was not acted upon and that the plaintiff himself was in possession of the suit property. It also found Ex.A5 to be true. On the said findings the trial Court decreed the suit and the same was confirmed on appeal by the lower appellate Court.

3. Sri T.S. Anand, learned Counsel appearing for the appellants in the second appeal assailed the judgments of the Courts below on several grounds. He firstly contended that the Courts below committed an illegality in holding that Ex.B1 was a nominal sale deed even though there was no issue regarding the same. He also contended that the execution of Ex.A5 was not proved by any legal or reliable evidence inasmuch as the scribe and attester of Ex.A5 who were examined as

PWs.2 and 3 respectively are close relations of the defendants and as such they are interested witnesses. He further contended that the suit for bare injunction without praying for cancellation of the sale deed Ex.BI and without seeking the relief of specific performance of Ex.A5 is not maintainable. He further submitted that the relief of specific performance is also barred by time. He finally submitted that Ex.BI and A5 are hit by Section 23 of the Contract Act as they are forbidden by law and opposed to public policy and if permitted they will defeat the provisions of Land Ceiling Legislation.

4. On the other hand Sri E.5. Ramachandramurthy, learned Counsel appearing for the respondents contended that the suit for injunction based on possession is perfectly maintainable and there is no need or necessity for the plaintiff to seek a declaration of title or cancellation of Ex.BI or even specific performance of Ex.A5. If the first defendant claims title under Ex.BI and wants any relief on the basis of Ex.BI it is for him to file a suit. He also submitted that the concurrent findings of fact recorded by both the Courts below on the question of possession and also as regards the nature of Ex.BI and A5 are perfectly correct and valid and unassailable and there are no valid grounds whatsoever for interference under Section 100 of CPC.

5. Both the Courts below on a consideration of the entire oral and documentary evidence on record came to the conclusion that Ex.BI sale deed was nominally executed without any consideration and that the plaintiff did not part with possession of the land. To come to that conclusion they have also placed reliance on the recitals in Ex.A5. Accepting the evidence of PWs.2 and 3 the Courts below found that Ex.A5 was true and the same was executed by the first defendant. The evidence of PWs.2 and 3 cannot be discarded merely because they happened to be near relations of the first defendant. To prove his possession the plaintiff relied on Ex.A2 the rough patta granted to him for the suit land and the Land Revenue receipts marked as Exs.A3 and A4 and also verification report of the Tahsildar Ex.A1. As against this evidence the defendants relied on the land revenue receipts marked as Exs.B3 to B5 and rough patta B2 issued in the joint names of plaintiff and the first defendant besides the oral evidence of DWs.2 to 4 who are said to be the adjacent land owners. On a consideration of the said evidence both the Courts

below concurrently found that the plaintiff himself was in possession of the suit land. I do not find any valid grounds to interfere with the said findings of fact. Though there was no specific issue regarding the nominal nature of Ex.B1 or regarding the execution of Ex.A5 by D1, the parties were fully alive to the said questions and both the parties lead evidence regarding the same. That apart in my view issues 1 and 2 framed in the suit are wide enough to comprehend the said questions also. As such I do not find any illegality or infirmity in the findings of fact recorded by both the Courts below concurrently warranting interference in the second appeal.

6. Now coming to the legal contentions advanced by the learned Counsel for the appellants regarding the maintainability of the suit for mere injunction without seeking cancellation of Ex.B1 and without claiming the relief of specific performance of Ex.A5, it may be mentioned that these contentions were not raised in the Courts below and they are sought to be raised for the first time in the second appeal. However, as they are pure questions of law, which arise on the facts, admitted or proved. I do not find any valid objection for allowing the same to be raised for the first time in the second appeal. It is the settled legal position that a suit for injunction based on possession without title can also be maintained. Section 38 of the Specific Relief Act, 1968 deals with the grant of perpetual injunction. According to subsection (2) of the said section a perpetual injunction may be granted to the plaintiff when the defendant invades or threatens to invade the plaintiff's right to or enjoyment of property where the invasion is such that compensation in money would not afford adequate relief and where the injunction is necessary to prevent a multiplicity of judicial proceedings. It is well settled that in a suit for injunction the primary question to be considered relates to possession, though the question of title also may be gone into incidentally. A person in possession, though without title, can resist interference from another who has no better title than him and get injunction (see *M.K. Setty v. MVL Rao*, : AIR 1972 SC2299). In *Swaminatha v. Narayanaswami*, AIR 1936 Mad. 936, it is held that where the allegations of the plaintiff are that he is in lawful possession of the properties and that his possession is threatened to be interfered with by the defendants, he is entitled to sue for a mere injunction without adding prayer for a declaration of his rights. To the same effect is the decision in *Fakirbhai*

Bhagwandas and Anr. v. Maganlal Haribhai and Anr., : AIR1951 Bom380 . Following the said judgments this Court in Chepana Peda Appalaswamy v. Chepana Appalanaidu, 1996 (2) ALD 499, held that a suit for mere injunction without a prayer for declaration of title is maintainable.

7. The learned Counsel for the appellants however, seeks to draw support from Section 31 of the Specific Relief Act and the decisions in Mabeeba Begum v. Gulam Rasool, : 1999(4)ALT496 and K. Venkata Rao and others v. Sunkara Venkata Rao, : 1998(6)ALD278 . Sub-section (1) of Section 31 of the Specific Relief Act provides that any person against whom a written instrument is void or voidable and has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. It is manifest from the section itself that it is not mandatory or obligatory to sue for cancellation of the instrument. It is optional and it is for the person against whom such instrument is void or voidable to sue to have it set aside where he has a reasonable apprehension that it may cause him serious injury if left unchallenged. The two decisions relied on the learned Counsel for the appellants are easily distinguishable and they have no application to the facts of the instant case. In Mabeeba Begum v. Gulam Rasool (supra), the plaintiff who was a consenting party to various documents whereby the suit property was divided between the plaintiff and his brothers and sisters, filed a suit for declaring that he is the exclusive owner of the property without praying for cancellation of those deeds to which he is a party. It was found from the conduct of the plaintiff himself that the said documents were fully acted upon and that he had also relinquished his rights in favour of the other members of the family. Under those circumstances, it was held that without seeking cancellation of the said documents the plaintiff could not maintain the suit for injunction simpliciter without declaration of title. Similarly in K. Venkata Rao and others v. Sunkara Venkata Rao (supra), the plaintiff who was put in possession of the suit property in part performance of a contract of sale, filed the suit for injunction claiming the benefit of Section 53A of the Transfer of Property Act. It was found that the plaintiff failed to pay the balance of sale consideration as per the agreement of sale and he set up a false plea that he paid the balance of sale consideration. On those facts it was held that he was not

entitled to the equitable relief of injunction as he failed to establish his readiness and willingness to perform his part of the contract and hence it was held that the suit was not maintainable. But in the instant case the facts are entirely different. It was found concurrently by both the Courts that the sale deed Ex.B1 was nominal and that the plaintiff continued to remain in possession and enjoyment of the property through out. Here the suit is filed on the basis that the plaintiff was in lawful possession and enjoyment of the property and the defendants were trying to unlawfully interfere with his possession without any manner of right. It was therefore, not necessary for the plaintiff to seek declaration of his title or for cancellation of the sale deed Ex.B1. It is well settled that a sham or nominal sale deed need not be set aside or cancelled only if it is a real transaction it has to be set aside or cancelled. Here the plaintiff is not claiming any relief on the basis of Ex.A5 and the suit is also not filed on the basis of Ex.A5, Ex.B1 and Ex.A5 are referred to only for the purpose of establishing the plaintiff's possession. I do not therefore, find any substance in the contention that the suit for mere injunction is not maintainable.

8, As regards the contention based on Section 23 of the Contract Act, it is seen from Ex.A1 that as a matter of fact the holding of the plaintiff was much below the ceiling limit prescribed by the A.P. Land Reforms (Ceiling on Agriculture) Act, 1973 and he was declared to be a non-surplus holder. It is therefore, not established that any fraud was committed or that the same was accomplished by the execution of Ex.B1 sale deed. The question of Section 23 of the Contract Act being attracted to the case therefore does not arise. Even assuming that the said section is attracted, in such a case Ex.B1 will be void and the defendants will not be entitled to claim any rights thereunder. The learned Counsel for the plaintiff contends that Ex.A5 also will be equally hit by Section 23 of the Contract Act and the plaintiff cannot claim any rights on the basis of Ex.A5 or to enforce the same. The suit is filed for permanent injunction on the basis of plaintiff's possession. As such I do not find any merit in this contention of the learned Counsel for the appellants as well.

9. For all the foregoing reasons the second appeal fails and it is accordingly, dismissed but in the circumstances of the case without costs.

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